



*The Public Service Commission  
State of South Carolina*

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October 6, 2005

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Return Receipt Requested

John F. Beach, Esquire  
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Wendy B. Cartledge, Esquire  
Office of Regulatory Staff  
P.O. Box 11263  
Columbia, SC 29211

Re: Application of Fonix Telecom, Inc.  
Commission Docket No. 2005-192-C

RECEIVED

SEP 06 2005

PSC SC  
MAIL / DMS

Dear John, Jack, and Wendy:

Enclosed please find a proposed order in the above-captioned docket, which is being delivered to you pursuant to the requirements of 26 S.C. Code Ann. Regs. 103-865 (C). As parties of record in this case, you have ten (10) days from your receipt of this proposed order to file exceptions, present briefs, and/or file written requests for oral argument to the Commission, if you should desire to do so. If none of these are received by me within 10 days of your receipt of the proposed order, I will request that the Commission issue its order in this case based upon the record of the formal proceeding and the proposed order.

Thank you in advance for your consideration in this matter.

Sincerely,

F. David Butler  
Hearing Examiner

FDB/dd  
cc: Joseph Melchers, Chief Legal Advisor

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2005-192-C - ORDER NO. 2005-  
OCTOBER 6, 2005

IN RE: Application of Fonix Telecom, Inc. for a	) ORDER
Certificate of Public Convenience and	) GRANTING
Necessity to Provide Resold and Facilities-	) CERTIFICATE WITH
Based Interexchange and Local Exchange	) REPORTING
Telecommunications Services, for Flexible	) REQUIREMENTS, AND
Rate Structure for Local Exchange Service	) APPROVING MODIFIED
Offerings First Approved in Docket No. 97-	) ALTERNATIVE
467-C and for Alternative Regulation First	) REGULATION AND
Approved in Docket No. 95-661-C.	) FLEXIBLE
	) REGULATION-
	) PROPOSED ORDER OF
	) HEARING EXAMINER

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Fonix Telecom, Inc. (“Fonix” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide Resold and Facilities-based Interexchange and Local Exchange Telecommunications Services. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2004) and the general regulatory authority of the Commission. By its Application, Fonix also requests modified alternative regulation of its business services interexchange offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C as modified

by Order No. 2001-997, flexible regulation of its local service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C, and a waiver of certain Commission regulations.

The Commission's Docketing Department instructed Fonix to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of Fonix and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Fonix complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the South Carolina Telephone Coalition ("SCTC"). No Protests were filed.

A hearing was convened on September 26, 2005, at 10:00 a.m. in the Commission's Meeting Room, Columbia, South Carolina, before David Butler, Hearing Examiner. Fonix was represented by John F. Beach, Esquire. The Office of Regulatory Staff ("ORS") was represented by Wendy B. Cartledge, Esquire. Prior to the hearing, a Stipulation was signed between the Company and the South Carolina Telephone Coalition. The Stipulation was entered into the evidence of the case as Hearing Exhibit No. 2. SCTC did not appear at the hearing.

Michael Britt, Vice-President of Regulatory & Channel Development for the Company, appeared and testified in support of the Application. The record reveals that Fonix is incorporated in Delaware and registered to transact business in South Carolina as a foreign corporation. The Company is now certificated in Florida, and the Georgia Public Service Commission has now voted to give the Company a Certificate. According

to Mr. Britt, Fonix proposes to operate as a reseller of intrastate interexchange telecommunications service and to offer resold and facilities-based local exchange telecommunications in the BellSouth area to residential and business customers in the State of South Carolina.

Fonix services will be offered twenty-four hours per day, seven days a week. It does intend to employ sales agents, both independent and in-house. Mr. Britt explained the Company's request for authority, and the record further reveals the Company's services, operations, and marketing procedures.

Mr. Britt also discussed Fonix's technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Mr. Britt testified that Fonix possesses sufficient financial resources to support its operations in South Carolina. According to Mr. Britt, the Company expects to earn \$17 million in revenue this year. It should be noted that the Company's Application contained a letter from the President of the Company's parent Company, Fonix Corporation, which states that Fonix Corporation agrees to provide financial support and backing for its subsidiary company Fonix Telecom, Inc. (Exhibit D to the Application). Financial backing was described to be in an amount not to exceed \$150,000 and to extend for a period of twelve (12) months after certification. The letter went on to note that Fonix Corporation would provide Fonix Telecom, Inc. with the financial support necessary to, for example, purchase any requisite facilities and services that it requires. However, additional documents filed with the Application raise some doubt as to the ability of Fonix Corporation to fulfill its promise of financial backing to Fonix Telecom, Inc. In its "Notes to Condensed Consolidated

Financial Statements” from the Fonix Corporation’s Form 10-Q (Exhibit D to the Application at 7-8), Fonix Corporation noted that “the Company expects to continue to incur significant losses and negative cash flows from operating activities through at least December 31, 2005, primarily due to significant expenditure requirements associated with continued marketing and development of its speech-enabling technologies and further developing its telecommunications services business. The Company’s cash resources....have not been sufficient to cover operating expenses. As a result, payments to employees and vendors have been delayed.” The Notes go on to state that, “These factors, as well as the risk factors set out in the Company’s Annual Report on Form 10-K for the year ended December 31, 2004, raise substantial doubt about the Company’s ability to continue as a going concern.”.....”Management plans to fund future operations of the Company through revenues generated from its telecommunications operations, from cash flows from future license and royalty arrangements and with proceeds from additional issuance of debt and equity securities. There can be no assurance that management’s plans will be successful.” Therefore, Fonix Corporation may not be able to ultimately abide by its financial guarantee to Fonix Telecom, Inc. Further, because of the quoted statements contained in the Exhibit to the Company’s Application, there is some concern as to whether or not Fonix Telecom, Inc. as a startup company meets the requirements of S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 2004) as to its financial ability to provide the services requested in its Application.

With regard to management and technical capabilities, however, the Company has not been denied a license in any of the states in which it has

applied, has had no licenses revoked in any jurisdictions, nor has it been the subject of any investigations by any governmental regulatory agencies. The Company's Application and Mr. Britt's testimony both evidence that Fonix's management team has extensive experience in both marketing and communications. Mr. Britt also testified that Fonix will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Mr. Britt offered that approval of Fonix's Application would serve the public interest by increasing the level of competition in South Carolina. Mr. Britt, on behalf of the Company, requests a waiver of 26 S.C. Code Ann. Regs. 103-610 and to be allowed to keep the Company's books at its headquarters. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts (USOA). Fonix maintains its books in accordance with Generally Accepted Accounting Principles (GAAP). In addition, the Company requests that it not be required to publish local exchange directories, and therefore requests waiver of 26 S.C. Code Ann. Regs. 103-631. Fonix will make arrangements with the incumbent local exchange carrier to include its customers in the incumbent's directories. Lastly, Fonix requests a waiver of 26 S.C. Code Ann. Regs. 103-612.2.3, which would require Fonix to file a map showing its certificated area. Fonix plans to offer local service throughout the BellSouth area.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Fonix is organized under the laws of the State Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. Fonix has no reported record of violations of regulatory laws or regulations in the jurisdictions in which it is currently operating.

3. Fonix desires to operate as a reseller of interexchange and local telecommunications services in South Carolina.

4. We find that Fonix possesses the managerial experience and capability to operate as a non-facilities based reseller of interexchange and local services in South Carolina.

5. We find, based on the financial records and balance sheets submitted by the Company, that Fonix possesses questionable financial resources to provide the services as described in its Application, and that certain reporting requirements as described below should be imposed on the Company.

6. We find that the issuance of a Certificate of Public Convenience and Necessity to Fonix to operate as a reseller of interexchange and local telecommunications services in South Carolina would be in the best interest of the citizens of South Carolina by increasing the level of long distance competition in South Carolina, by providing an alternative for long distance and local telecommunications services, and by increasing consumer awareness of options and services available, thereby encouraging growth and success of competitive services, although, in view of the financial status of the

Company's parent, we believe that certain financial reporting requirements should be imposed on the Company to safeguard the public interest.

7. Fonix has no plans to maintain offices in South Carolina and requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds Fonix's requested waiver reasonable and understands the difficulty presented to Fonix should the waiver not be granted. Further, we find that a waiver of 26 S.C. Code Ann. Regs. 103-610 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable. Additionally we find that waivers of 26 S.C. Code Ann. Regs. 103-631 and 103-612.2.3 are reasonable and in the public interest.

8. The Company has the managerial and technical resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280(B)(1)(Supp. 2004).

9. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280(B)(3)(Supp. 2004).

10. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280(B)(4)(Supp. 2004).

11. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2)(Supp. 2004).



12. The Commission finds that the provision of local exchange service by the Company “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280(B)(5)(Supp. 2004).

13. Following execution of a Stipulation with intervenor South Carolina Telephone Coalition (SCTC), the SCTC withdrew its opposition to the Application.

### **CONCLUSIONS OF LAW**

1. The Commission concludes that Fonix possesses the managerial and technical resources to provide the telecommunications services as described in its Application. The Company intends to offer several innovative services to South Carolina customers. However, the financial resources of the Company are in question. For the purposes of awarding a Certificate to Fonix, this Commission will recognize the Britt testimony, which stated that Fonix Telecom, Inc. is expected to earn \$17,000,000 in revenue this year as evidence that the Company conditionally meets the financial requirements found in S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 2004). However, this Commission herein requires that the Company file updated quarterly financials (income statement, balance sheet and any other relevant financial documents) with this Commission and with ORS, beginning with the quarter ending December 31, 2005 until further Order of the Commission. Such reports will be due within one month after the end of each quarter. If the Office of Regulatory Staff files a Petition requesting relief, this Commission may require another proceeding to assess the financial condition of this Company. If the Company’s financial condition continues to deteriorate from the position discussed in Fonix Corporation’s 10-Q form, this Commission may consider, after further

hearing, whether or not to revoke the Certificate of Public Convenience and Necessity granted herein.

2. The Commission concludes that Fonix will participate in the support of universally available telephone service at affordable rates to the extent that Fonix may be required to do so by the Commission.

3. The Commission concludes that Fonix will provide services which will meet the service standards of the Commission.

4. The Commission concludes that, with the imposition of the financial reporting requirements, approval of Fonix's Application to provide intrastate telecommunications services within South Carolina will serve the public interest by enhancing competition in the State of South Carolina by offering additional service offerings to South Carolina's consumers and by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by Fonix will not adversely impact the public interest at this time.

6. The Commission concludes that the issuance of the authority to provide intrastate interexchange telecommunications services as requested by Fonix and as set forth in its Application, is in the best interests of the citizens of the State of South Carolina, with the financial reporting requirements imposed.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to Fonix to provide intrastate interexchange and local telecommunications services at this time.

8. The Commission concludes that Fonix's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

9. With regard to the residential interexchange service offerings of the Company, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). With regard to residential interexchange service rates, the Company shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. The Company shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. Section 58-9-540(Supp. 2004).

10. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for

the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

11. We conclude that Fonix's request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted as strict compliance with the regulation would cause undue hardship on Fonix. We also grant exemption from the policies requiring the use of USOA. In addition, we grant waiver of 26 S.C. Code Ann. Reg. 103-631 which requires publication of a local telephone directory, and 26 S.C. Code Ann. Regs. 103-612.2.3, which would require Fonix to file with the Commission a map showing its certificated area.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

1. A Certificate of Public Convenience and Necessity should be granted to Fonix to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission, as well as to provide local

telecommunications services within the State of South Carolina. The Company shall make quarterly financial filings as described above. If ORS files an appropriate Petition, this Commission may review the financial condition of this Company, and may, after hearing, revoke the granted Certificate if the financial condition of the Company continues to deteriorate.

2. The Company's rate designs for its products shall comport to those designs described in Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, Fonix shall file its revised tariff and an accompanying price list for any applicable rates within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order, shall be consistent with the Commission's Rules and Regulations, and shall conform to any agreement with the Office of Regulatory Staff for changes.

4. Fonix is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. Fonix shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Fonix changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same

LATA, Fonix shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Fonix shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. In addition to the financial filings required supra, Fonix shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Fonix shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at [www.psc.sc.gov/reference/forms.asp](http://www.psc.sc.gov/reference/forms.asp). The title of this form is "Annual Report for Interexchange Companies." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1<sup>st</sup>**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31<sup>st</sup>** of each year. The proper form for filing gross receipts information can be found at the Commission's website at

[www.psc.sc.gov/reference/forms.asp](http://www.psc.sc.gov/reference/forms.asp), and the appropriate form is entitled “Gross Receipts for Utility Companies.”

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Fonix shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp); this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

10. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, Fonix requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2004), which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The record reveals that Fonix’s principal headquarters will be located outside of South Carolina. Fonix requests permission to maintain its books and records at its headquarters in its home office. The Commission finds Fonix’s requested waiver reasonable and understands the difficulty presented to



Fonix should the waiver not be granted. The Commission therefore grants the requested waiver that Fonix be allowed to maintain its books and records at its principal headquarters. However, Fonix shall make available its books and records at all reasonable times upon request by the Commission or the Commission Staff, and Fonix shall promptly notify the Commission if the location of its books and records changes.

12. Fonix also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, Fonix maintains its book of accounts in accordance with Generally Accepted Accounting Principles (GAAP). GAAP is used extensively by interexchange carriers. Moreover, Fonix asserts that because it utilizes GAAP, the Commission will have a reliable means by which to evaluate Fonix's operations and assess its financial fitness. Accordingly, Fonix hereby requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above. We also grant the Company's request to waive 26 S.C. Code Ann. Regs. 103-631 and 103-612.2.3, because of the unusual difficulty that the Company would have in complying with these regulations.

13. Each telecommunications company certified in South Carolina is required to file annually the Intrastate Universal Service Fund (USF) worksheet. This worksheet provides ORS information required to determine each telecommunications company's

liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15<sup>th</sup> with the Commission and ORS.

14. This Order shall remain in full force and effect until further notice by this Commission.

BY ORDER OF THE COMMISSION:

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Randy Mitchell, Chairman

ATTEST:

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G. O'Neal Hamilton, Vice-Chairman

(SEAL)